

§ 400.42 Operation as public utility.

(a) *In general.* Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), each zone shall be operated as a public utility, and all rates and charges for all services or privileges within the zone shall be fair and reasonable. A rate or charge (fee) may be imposed on zone participants to recover costs incurred by or on behalf of the grantee for the performance of the grantee function. Such a rate or charge must be directly related to the service provided by the grantee (for which the fee recovers some or all costs incurred) to the zone participants. Rates or charges may incorporate a reasonable return on investment. Rates or charges may not be tied to the level of benefits derived by zone participants. Other than the uniform rates and charges assessed by, or on behalf of, the grantee, zone participants shall not be required (either directly or indirectly) to utilize or pay for a particular provider's zone-related products or services.

(b) *Delayed compliance date.* The compliance date for the requirements of paragraph (a) of this section shall be February 28, 2014.

§ 400.43 Uniform treatment.

Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), a grantee shall afford to all who may apply to make use of or participate in the zone uniform treatment under like conditions. Treatment of zone participants within a zone (including application of rates and charges) shall not vary depending on whether a zone participant has procured any zone-related product or service or engaged a particular supplier to provide any such product or service.

(a) *Agreements to be made in writing.* Any agreement or contract related to one or more grantee function(s) and involving a zone participant (e.g., agreements with property owners and agreements with zone operators) must be in writing.

(b) *Evaluation of proposals.* A grantee (or person undertaking a zone-related function(s) on behalf of a grantee, where applicable) shall apply uniform treatment in the evaluation of proposals from zone participants. Uniform treatment does not require acceptance of all proposals by zone participants,

but the bases for a grantee's decision on a particular proposal must be consistent with the uniform treatment requirement.

(c) *Justification for differing treatment.* Given the requirement for uniform treatment under like conditions, for any instance of different treatment of different zone participants, a grantee (or person undertaking a zone-related function(s) on behalf of a grantee, where applicable) must be able to provide upon request by the Executive Secretary a documented justification for any difference in treatment.

(d) *Avoidance of non-uniform treatment.* To avoid non-uniform treatment of zone participants, persons (as defined in § 400.2(1)) within key categories set out in paragraph (d)(2) of this section shall not undertake any of the key functions set out in paragraph (d)(1) of this section (except in specific circumstances where the Board has authorized a waiver pursuant to paragraph (f) of this section).

(1) Key functions are:

(i) Taking action on behalf of a grantee, or making recommendations to a grantee, regarding the disposition of proposals or requests by zone participants pertaining to FTZ authority or activity (including activation by CBP);

(ii) Approving, or being a party to, a zone participant's agreement with the grantee (or person acting on behalf of the grantee) pertaining to FTZ authority or activity (including activation by CBP); or

(iii) Overseeing zone participants' operations on behalf of a grantee.

(2) Key categories of persons are:

(i) A person that currently engages in, or which has during the preceding twelve months engaged in, offering/providing a zone-related product/service to or representing a zone participant in the grantee's zone;

(ii) Any person that stands to gain from a person's offer/provision of a zone-related product/service to or representation of a zone participant in the zone; or

(iii) Any person related, as defined in paragraph (e) of this section, to the person identified in paragraphs (d)(2)(i) and (ii) of this section.